

## REMARKS

The Office Action dated July 29, 2003 has been carefully reviewed. Claims 1, 2, 12 and 13 are pending in this patent application with the withdrawal of claims 3-11 and 14-20 after election per a previous Restriction Requirement. Reconsideration of this patent application in view of this response is respectfully requested.

### I. Election/Restriction

Applicant hereby affirms the election to prosecute the invention of Group I, claims 1, 2, 12 and 13. Applicant understands that claims 3-11 and 14-20 are withdrawn from further consideration by the Examiner as being drawn to a non-elected invention (37 CFR §1.142(b)), as reflected in the above claim listing.

### II. Objection to the Drawings

The Drawings have been objected to by the Examiner for allegedly not showing every feature of the invention specified in the claims under 37 CFR §1.83(a). Particularly, the Examiner indicates that the "obtaining of information from a web site and a first (associated with a supplier) and second computer (associated with a retailer) must be shown or the feature(s) canceled from the claim(s).

A Replacement Sheet for Fig. 1 is provided as Attachment I. The Replacement Sheet for Fig. 1 adds a "web site" box labeled 29 to the server

(computer) 16. Support for the "web site" box 29 within the Server 16 is found in the last paragraph on page 4 and continuing to page 5. Particularly, it is indicated that "expiration information is stored within expiration data file 28, either locally at server 12 or at another server, *such as a World Wide Web (Web) server 16* (emphasis added) of the seller, who may be a supplier or manufacturer...". Moreover, in the Abstract of the Disclosure, it is disclosed that "The method includes...obtaining the expiration information from a *web site* (emphasis added) of a seller of the time-sensitive item. Clearly, the server 16, being a World Wide Web server and associated with a seller, includes the web site 29 as mentioned in the Abstract.

In view of the above, Applicant respectfully requests that the objection to the drawings for not showing a web site be withdrawn.

Applicant also respectfully submits that Fig. 1 does show a first and second computer, the first computer being associated with a supplier and the second computer associated with a merchant. Particularly, Fig. 1 shows three computers, namely, the EPL computer 14, the Server computer 12, and the Server computer 16.

As pointed out above, the Specification indicates that the server 16 may be the first computer and be associated with the supplier. This leaves two computers, namely the EPL computer 14 and the Server computer 12. The EPL computer 14 and/or the Server computer 12 is thus the second computer and therefore is associated with a retailer. Support is found in various parts of the Specification.

Particularly, in the "Background of the Invention", EPL and RFID technology is discussed in relation to the present invention. It is indicated that retailers utilize this technology for merchandise items. Moreover, the Specification, page 4; second paragraph under the heading "Detailed Description of the Preferred Embodiment", indicates that the "server 12 handles price requests from transaction terminals and maintains price information in PLU data file 22." It is thus apparent that the environment is a store or retail establishment that retails merchandise. Therefore, the second computer is the EPL computer and/or the Server computer 12.

In view of the above, Applicant respectfully requests that the objection to the drawings for not showing a first (associated with a supplier) and second computer (associated with a retailer) be withdrawn. Fig. 1 does show the two computers.

**III. Rejection of Claims 1, 2, 12 and 13 Under 35 U.S.C. §112, First Paragraph**

Claims 1, 2, 12 and 13 were rejected under 35 U.S.C. §112, first paragraph, as allegedly failing to comply with the written description requirement. Particularly, the Examiner alleges that "the claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s) at the time the application was filed, had possession of the claimed invention." See 7/29/03 Office Action, page 3, heading #3. This can be broken down into two

contentions, the term "time-sensitive item" and, the first and second computers and the web site.

a. The term "time-sensitive item"

First, the Examiner indicates that "Claims 1, 2, 12 and 13 cite a time-sensitive item, however, the specification does not define what a time sensitive item is." (See the 7/29/03 Office Action, page 4, under heading #3). The Examiner further states that "reference is made to expiration of products but not [sic] links is made between them and time-sensitive items nor is it apparent that this is the intended scope of a time-sensitive item." (See the 7/29/03 Office Action, pages 4-5).

Applicant respectfully disagrees that time-sensitive items are not defined in the specification. While there isn't one particular statement indicating that the time-sensitive items are a particular type of item, it is clear from various portions of the specification that a time-sensitive item includes, at a minimum, date-sensitive merchandise items, typical of those sold by a merchandise retailer. Support for this proposition is first provided in the opening paragraph of the specification. This opening paragraph indicates that the "invention relates to electronic price label (EPL) systems, and more specifically to a system and method of managing time-sensitive item. Further support for this interpretation is evident from the Background of the Invention where EPL systems are discussed with respect to merchandise items. It is indicated that "products such as produce items, bakery items, and dairy products have short shelf lives. Non-food items,

such as newspapers, magazines, and flowers also have short time spans for selling. Once the expiration data approaches, retailers may mark down items for quick sale or let the items expire and dispose of them.” (See page 1 of the Specification). Moreover, it is stated in the Specification that “it would be desirable to combine the communication capabilities of electronic price label systems with RFID technology in order to lower prices and identify expired products.” (see the first paragraph on page 2 of the Specification). Other passages of the Specification indicate the same.

From the above, it is clear that time-sensitive items are defined in such a way as to *reasonably* convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. It is not necessary that a specific statement or passage explicitly provide a one-to-one definition of a time-sensitive item.

Given the above, however, Applicant has amended claims 1, 2, 12 and 13 to recite a “*date*-sensitive merchandise item” in place of a “time-sensitive item”. This term more clearly defines the subject matter in possession of the Applicant at the time the application was filed, and more clearly reasonably conveys the meaning thereof to one skilled in the art.

In view of the above, Applicant respectfully submits that the term “date-sensitive merchandise item” is described in the specification in a manner as to *reasonably* convey to one skilled in the relevant art, that the inventor, at the time the application was filed, had possession of the claimed invention.

b. The First and Second Computers, and the Web Site

Secondly, so far as the Examiner's rejection is understood, the Examiner indicates that there is insufficient description for the first computer associated with a supplier, a second computer associated with the retailer, and a web site address that stores the information about the time-sensitive item. The Examiner does indicate that this is disclosed in the Summary of the Invention with the exception of a second computer associated with a retailer (see 7/29/03 Office Action, page 5 first full paragraph). Moreover, the Examiner goes on to indicate that "there is nothing in the Detailed Description which discloses any method of obtaining time-sensitive information from a web site." (see 7/29/03 Office Action, page 5 first full paragraph).

Contrary to this position, however, the Examiner then indicates that "there is limited disclosure that expiration information is stored either locally at server 12, or at another server, such as a World Wide Web (Web) server 16 of the seller, who may be a supplier or manufacturer, and who determines the expiration information for its products..." (see 7/29/03 Office Action, page 5 first full paragraph). It is further alleged that there is a discrepancy regarding what server does what, since functionality of the computers is disclosed in the Specification in the alternative. It is even further alleged that there is no teaching regarding the retrieval of expiration information from the web site.

Applicant submits that this is sufficient disclosure for one skilled in the art. These limitations are also recited in the Summary of the Invention of the present Specification. Additionally, as pointed out above with respect to the objection to

the drawings, the Detailed Description clearly sets forth that the server 12 may host the expiration information or that another server 16, being a World Wide Web (Web) server may host the expiration information. The claim is such that the server 16 alone must be the first computer (associated with the seller) which has a web site address and stores the information about the time-sensitive item. This being the case, one skilled in the art would know that the EPL computer 14 and/or the server 12, by default, must be the second computer (associated with a retailer). Since the server 16 is the web server, one skilled in the art would know how to access a web server and obtain data stored therein.

c. Conclusion

In view of the above, Applicant respectfully requests withdrawal of the rejection to claims 1, 2, 12 and 13 under §112, first paragraph.

**IV. Rejection of Claims 1, 2, 12 and 13 Under 35 U.S.C. §112, Second Paragraph**

Claims 1, 2, 12 and 13 were rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite for failing to point out and distinctly claim the subject matter which application regards as the invention. Particularly, the Examiner indicates that the term “time-sensitive” in claims 1, 2, 12 and 13 is a relative term which renders the claims indefinite.

Applicant has amended claims 1, 2, 12 and 13 to delete the term “time-sensitive” (i.e. “time-sensitive item”) and substitute the term “date-sensitive” (i.e.

“date-sensitive merchandise item”). Applicant respectfully submits that the term “date-sensitive” as in “date-sensitive merchandise item” is now definite. While various items may be “time-sensitive” as pointed out by the Examiner, only a particular type or class of items are “date-sensitive”. Thus the term “date-sensitive” is now used with “merchandise item” to result in the term “date-sensitive merchandise item” now recited in the claims.

It is clear from the Specification that expiration dates are being sought for a particular item having an expiration date. In this manner, the item is date-sensitive since it has an associated expiration date. The term ‘date-sensitive’ is a definite term. Therefore, Applicant respectfully requests withdrawal of the §112, second paragraph, rejection of claims 1, 2, 12 and 13.

**V. Rejection of Claims 1 and 12 Under 35 U.S.C. §102(e) and/or §103(a) by/over Lerner**

Independent claims 1 and 12 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by or, in the alternative, allegedly unpatentable under 35 U.S.C. §103(a) as obvious over US Patent Publication 2002/0230555 A1 by Lerner (hereinafter, “Lerner”). Applicant respectfully submits that Lerner does not anticipate nor render obvious independent claims 1 and 12.

**a. §102(e)**

It is axiomatic that for a reference to anticipate a claim, each and every limitation of the claim must be identically shown in the reference. In the 7/29/03



Office Action, page 11, the Examiner indicates that “Lerner does not explicitly teach that commodities, such as coffee, sugar, cocoa and cotton, or that offers in such a system are “time-sensitive.” As such, it is admitted by the Examiner that Lerner does not teach each and every limitation of independent claims 1 and 12.

Therefore, since Lerner does not teach each and every limitation of independent claims 1 and 12 as admitted by the Examiner, it is respectfully submitted that Lerner cannot anticipate independent claims 1 and 12 under §102.

b. §103(a)

The Examiner alleges in the alternative that Lerner renders independent claims 1 and 12 obvious, since the commodities of Lerner have inherent “time-sensitivities.” The Examiner then leaps to the conclusion that since the commodities of Lerner may be considered as having inherent “time-sensitivities”, it would have been obvious to one skilled in the art to implement the Lerner system with respect to the present methods (i.e. independent claims 1 and 12).

Initially, independent claims 1 and 12 have been amended to recite a method for obtaining information regarding “date-sensitive merchandise items.” Applicant respectfully submits that Lerner does not teach or make obvious a method for obtaining information regarding a date-sensitive merchandise item as recited in independent claims 1 and 12. Lerner does not provide a method whereby information regarding date-sensitive merchandise items is obtained. Lerner teaches a system and method for commodities trading. Commodities

trading and date-sensitive merchandise items are completely different. When the independent claims recited "time-sensitive items" it is understandable how the Examiner might interpret a commodity as a time-sensitive item. However, commodities cannot be considered "date-sensitive" in the sense of expiration dates as set forth in the present invention. Nor are commodities considered "merchandise items" in the sense that products are merchandise items as set forth in the present invention. For these reasons, Applicant submits that Lerner does provide a teaching that would render claims 1 and 12 obvious.

Moreover, independent claims 1 and 12 require the identification of the date-sensitive merchandise items. Lerner assembles information regarding a commodity but does not identify a date-sensitive merchandise item as presently claimed.

c. Conclusion

Since it has been shown above that Lerner provides no teaching or suggestion to one skilled in the art to render claims 1 and 12 obvious, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of independent claims 1 and 12. Accordingly, withdrawal of the rejection to claims 1 and 12 under §103(a) and allowance thereof is hereby respectfully requested.

**VI. Rejection of Claims 1, 2 and 12 Under 35 U.S.C. §102(e) and/or §103(a)**  
**by/over Ogasawara**

Independent claims 1, 2 and 12 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by or, in the alternative, allegedly unpatentable under 35 U.S.C. §103(a) as obvious over US Patent 6,327,576 issued to Ogasawara (hereinafter, "Ogasawara"). Applicant respectfully submits that Ogasawara does not anticipate nor render obvious independent claims 1, 2 and 12.

a. §102(e)

It is axiomatic that for a reference to anticipate a claim, each and every limitation of the claim must be identically shown in the reference. In the 7/29/03 Office Action, page 13, the Examiner indicates that "Ogasawara does not explicitly teach that product items with a shelf-life, i.e. an expiration date are "time-sensitive"." As such, it is admitted by the Examiner that Ogasawara does not teach each and every limitation of independent claims 1 and 12.

Ogasawara teaches a system and method for managing expiration-dated products utilizing an electronic receipt. Particularly, Ogasawara teaches that the expiration date of a purchased product may be provided to or be accessible by the purchaser. This is accomplished by providing the information electronically. The electronic information is stored in a storage device of a computer of the Ogasawara system. However, nowhere does Ogasawara teach obtaining the information from a web site, inherently indicating that the information is maintained on the web site. While Ogasawara teaches that a web enabled home terminal or computer may be used to access the expiration information *that is maintained on the Ogasawara system*, not on a web server.

Thus, Ogasawara does not disclose obtaining information from a web site as recited in independent claims 1, 2 and 12. Therefore, since Ogasawara does not teach each and every limitation of independent claims 1, 2 and 12 as admitted by the Examiner and pointed out above, it is respectfully submitted that Ogasawara cannot anticipate independent claims 1, 2 and 12 under §102.

b. §103(a)

The Examiner alleges in the alternative that Ogasawara renders independent claims 1, 2 and 12 obvious, since Ogasawara teaches a system that provides expiration dates for items. The Examiner then leaps to the conclusion that since Ogasawara teaches such a system, it would have been obvious (without the aid of another reference) to maintain the expiration dates (information) on a web site so as to be able to obtain the information from the web site.

Applicant respectfully submits that there is no teaching or suggestion in Ogasawara to maintain date-sensitive information on a web site so as to be able to obtain the information from the web site as recited in Independent claims 1, 2 and 12. While the Examiner points to column 4, lines 25-39, in the Ogasawara claim chart provided in the 7/29/03 Office Action, as teaching the obtaining of the information in a web server, Applicant respectfully disagrees.

Particularly, column 4, lines 25-39 of Ogasawara teach that the generated electronic receipt for a purchase that may contain expiration information for purchased items, is maintained on a store's web server for retrieval by the

purchaser over the Internet. This is not the same as, nor does it suggest maintaining the information on the web server for obtaining the information in response to the identification of a date-sensitive merchandise item as presently recited in independent claims 1, 2 and 12.

Moreover, while the Examiner points to other passages in Ogasawara that purportedly teach the use of a web site in the manner recited in claims 1, 2 and 12, a close reading of these passages only indicates that the already retrieved expiration information that has been added to an electronic receipt of items purchased, is stored electronically. Again, this is not the same as, nor does it suggest, maintaining the information on the web server for obtaining the information in response to the identification of a date-sensitive merchandise item as presently recited in independent claims 1, 2 and 12.

#### c. Conclusion

Since it has been shown above that Ogasawara provides no teaching or suggestion to one skilled in the art to render claims 1, 2 and 12 obvious, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of independent claims 1, 2 and 12. Accordingly, withdrawal of the rejection to claims 1, 2 and 12 under §103(a) and allowance thereof is hereby respectfully requested.

**VII. Rejection of Claims 1, 2 and 12 [sic] Under 35 U.S.C. §102(e) and/or §103(a) by/over Mankes**

It was indicated in the 7/29/03 Office Action that Independent claims 1, 2 and 12 were rejected under 35 U.S.C. §102(e) as allegedly anticipated by or, in the alternative, allegedly unpatentable under 35 U.S.C. §103(a) as obvious over US Patent 6,477,503 issued to Mankes (hereinafter, "Mankes"). The claim chart provided in support of the Examiner's position, however, lists claims 1, 12 and 13. Moreover, claim 13 has not been recognized as rejected with respect to Lerner or Ogasawara. Applicant thus takes the position that claims 1, 12 and 13 were meant to be rejected by or in view of Mankes. Applicant, however, respectfully submits that Mankes does not anticipate nor render obvious independent claims 1, 12 and 13.

a. §102(e)

It is axiomatic that for a reference to anticipate a claim, each and every limitation of the claim must be identically shown in the reference. In the 7/29/03 Office Action, page 15, the Examiner indicates that "Mankes does not explicitly teach that hotel rooms are "time-sensitive." As such, it is admitted by the Examiner that Mankes does not teach each and every limitation of independent claims 1, 12 and 13. Applicant submits that Mankes does not teach many of the limitations of independent claims 1, 12 and 13.

Mankes teaches an active reservation system that allows an event vendor to maintain a stand-alone inventory control system that ties directly to an active reservation server, which in turn is distributed through Internet-based reservation systems (web sites) to the users of the Internet. However, nowhere does

Mankes teach obtaining information regarding a date-sensitive merchandise item from a web site after identifying a date-sensitive merchandise item.

Thus, Mankes does not disclose obtaining information from a web site after identifying a date-sensitive merchandise item as recited in independent claims 1, 12 and 13. Therefore, since Mankes does not teach each and every limitation of independent claims 1, 12 and 13 as admitted by the Examiner and pointed out above, it is respectfully submitted that Mankes cannot anticipate independent claims 1, 12 and 13 under §102.

b. §103(a)

The Examiner alleges in the alternative that Mankes renders independent claims 1, 12 and 13 obvious, since Mankes teaches a system that utilizes a web site for maintenance of a stand-alone inventory control system for an active reservation system. The Examiner then leaps to the conclusion that since Mankes teaches such a system, it would have been obvious (without the aid of another reference) to maintain expiration dates (information) on a web site so as to be able to obtain the information from the web site in response to the identification of a date-sensitive merchandise item.

Applicant respectfully submits that there is no teaching or suggestion in Mankes to maintain date-sensitive information on a web site so as to be able to obtain the information from the web site in response to the identification of a date-sensitive merchandise item as recited in Independent claims 1, 12 and 13.

While the Examiner points to various text passages in Mankes that purportedly teaches or suggests the identification of date-sensitive merchandise items and the use of a web site in the manner recited in claims 1, 2 and 12, a close reading of these text passages indicates only that a web site is accessed for reservation information. There is no suggestion for the identification of date-sensitive merchandise items.

c. Conclusion

Since it has been shown above that Mankes provides no teaching or suggestion to one skilled in the art to render claims 1, 12 and 13 obvious, a prima facie case of obviousness under 35 U.S.C. § 103 has not been established with regard to the invention of independent claims 1, 12 and 13. Accordingly, withdrawal of the rejection to claims 1, 12 and 13 under §103(a) and allowance thereof is hereby respectfully requested.



VIII. CONCLUSION

In view of the foregoing, it is submitted that this application is in condition for allowance. Therefore, Applicant respectfully requests the withdrawal of the objection to the drawings, objections and rejections to the claims, and an early allowance of all pending claims.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Bruce J. Bowman", written over a horizontal line.

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